IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER, Plaintiff, v.	NI A	: CIVIL ACTION NO. 02-cv-567 : : : : : : : : : : : : : : : : : : :
UNIVERSITY OF PENNSYLVA	et al.,	: :
Defendants.		: : : :
	0	RDER
AND NOW, this	day of	, 2006, upon consideration of Penn's
Response In Opposition to Plaintif	f's Motion	n for Relief from Civil Judgment Pursuant to Rule 60
(b)(6), it is hereby ORDERED that	t said Moti	ion for Relief is DENIED.
		BY THE COURT:
		Anita B. Brody, J.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

:

GORDON ROY PARKER,

CIVIL ACTION NO. 02-cv-567

Plaintiff,

•

v.

:

UNIVERSITY OF PENNSYLVANIA,

et al.,

Defendants.

:

PENN'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO RULE 60 (b)(6)

Gordon Parker has asserted no new basis to reopen this closed case. In support of the present Motion, Parker relies solely on <u>Burlington Northern and Santa Fe Railway Co. v. White</u>, 2006 U.S. LEXIS 4895 (2006). Parker claims that <u>Burlington</u> should be applied retroactively and, if it were, he is entitled to reversal of the summary judgment entered against him.

First, it is well-settled that a Supreme Court decision cannot be applied retroactively to closed cases. See United States v. Sullivan, U.S. Dist. LEXIS 23988, *17 (E.D. of Pa. December 12, 2002)("when the Supreme Court applies a rule of federal law to the parties before it, that rule is the controlling application of federal law and must be given full retroactive effect in all cases open on direct review"(quoting Harper v. Va. Dept. of Taxation, 509 U.S. 86, 97 (1993))) (emphasis added). Parker's case was dismissed by this Court in September 2004. He exhausted his appeals, including a writ certiorari to the Supreme Court, which also was denied in November 2005. The case is closed and thus, could not be re-opened because of Burlington.

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Second, Burlington would provide Parker no relief. There, the Supreme Court held, in

essence, that an adverse employment action (i.e. retaliation) is not confined to employment or the

workplace. <u>Id.</u> at *26. In reaching the decision to grant Penn summary judgment, this Court

considered all of Parker's alleged retaliatory motives and, in fact, found that Parker had met the

prima facie threshold. Parker, however, failed to prove pretext – an issue not before the

Supreme Court in Burlington. See, August 13, 2004 Explanation and Order, pp. 6-7, attached as

Exhibit "A."

Nothing in <u>Burlington</u> changes the decision reached by this Court, and Parker never

offered any evidence that his failure to be hired was based on factors other than his failure to

apply for a job.

For the above reasons, Parker's Motion for Relief must be denied.

Respectfully submitted,

Dated: July 19, 2006

/s/Dennis G. Young, Jr.

John M. Myers, Esquire (Pa. Id. No. 16642)

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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing Penn's Response In Opposition to Plaintiff's Motion for Relief by electronic filing, e-mail and/or first class mail, postage prepaid, upon the following:

Gordon Roy Parker 4247 Locust Street, #806 Philadelphia, PA 19104 *Pro Se Plaintiff*

Dated: July 19, 2006 /s/Dennis G. Young, Jr.

Dennis G. Young, Jr.